

AMENDING AND EXTENDING THE TRIBALLY CONTROLLED COMMUNITY COLLEGE ASSISTANCE ACT OF 1978, AND FOR OTHER PURPOSES

DECEMBER 13 (legislative day, NOVEMBER 30), 1982.—Ordered to be printed

Mr. COHEN, from the Select Committee on Indian Affairs,
submitted the following

REPORT

[To accompany S. 2623]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2623) to amend and extend the Tribally Controlled Community College Assistance Act of 1978, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

The amendment in the nature of a substitute is as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. The matter preceding title I of the Tribally Controlled Community College Assistance Act of 1978 (92 Stat. 1325) (hereafter in this Act referred to as the "Act") is amended—

(1) by striking out "DEFINITIONS" and inserting in lieu thereof the following—

"DEFINITIONS

"SEC. 2. (a) For purposes of this Act, the term—

(2) by inserting before the semicolon at the end of paragraph (5) thereof the following. "and the reference to Secretary in clause (5)(A) of such section shall be deemed to refer to the Secretary of the Interior"; and

(3) by striking out paragraph (7) and inserting in lieu thereof the following:

"(7) 'Indian student count' means a number equal to the total number of Indian students enrolled in each tribally controlled community college, determined in a manner consistent with subsection (b) of this section on the basis of the quotient of the sum of the credit hours of all Indian students so enrolled, divided by twelve.

"(b) For the purpose of determining the Indian student count pursuant to paragraph (7) of subsection (a), such number shall be calculated on the basis of the registrations of Indian students as in effect at the conclusion of the third week of each academic term. Credits earned in classes offered during a summer

term shall be counted toward the computation of the Indian student count in the succeeding fall term. Indian students earning credits in any continuing education program of a tribally controlled community college shall be included in determining the sum of all credit hours. For such purposes, credits earned in a continuing education program shall be converted to a credit-hour basis in accordance with the tribally controlled community college's system for providing credit for participation in such program."

SEC. 2. Section 101 of the Act is amended by inserting immediately before the period at the end thereof the following: ", and to allow for the improvement and expansion of the physical resources of such institutions".

SEC. 3. (a) Section 102 of the Act is amended—

(1) by striking out "is authorized to" in subsection (a) and inserting in lieu thereof "shall, subject to appropriations,"; and

(2) by striking out "to defray the expense of activities related to education programs for Indian students" in subsection (b) and inserting in lieu thereof "to defray, at the determination of the tribally controlled community college, expenditures for academic, educational, and administrative purposes and for the operation and maintenance of the college".

(b) Section 106(a) of the Act is amended by inserting after the second sentence the following new sentence: "Such application shall include a description of recordkeeping procedures for the expenditure of funds received under this Act which will allow the Secretary to audit and monitor programs conducted with such funds."

SEC. 4. (a) The Act is amended—

(1) by redesignating sections 104 through 114 as sections 105 through 115, respectively; and

(2) by inserting after section 103 the following new section:

"PLANNING GRANTS

"SEC. 104. (a) The Secretary shall establish a program in accordance with this section to make grants to tribes and tribal entities to conduct planning activities for the purpose of developing proposals for the establishment of tribally controlled community colleges, or to determine the need and potential for the establishment of such colleges.

"(b) The Secretary shall establish, by regulation, procedures for the submission and review of applications for grants under this section.

"(c) From the amount appropriated to carry out this title for any fiscal year (exclusive of sums appropriated for section 105), the Secretary shall reserve (and expend) an amount necessary to make grants to five applicants under this section of not more than \$15,000 each, or an amount necessary to make grants in that amount to each of the approved applicants, if less than five apply and are approved."

(b) The Act is further amended—

(1) by striking out "section 106" in section 105 (as redesignated by subsection (a) (1)) and inserting in lieu thereof "section 107";

(2) by striking out "section 105" in section 106 (as so redesignated) and inserting in lieu thereof "section 106";

(3) by striking out "section 110" in section 107 (as so redesignated) and inserting in lieu thereof "section 111";

(4) by striking out "section 106" in section 109 (as so redesignated) and inserting in lieu thereof "section 107";

(5) by striking out "section 104" in section 109 (as so redesignated) and inserting in lieu thereof "section 105"; and

(6) by striking out "section 106(a)" in section 110 (as so redesignated) and inserting in lieu thereof "section 107(a)".

SEC. 5. Section 105 of the Act (as redesignated by section 4(a)(1)) is amended—

(1) by inserting "from a tribally controlled community college which is receiving funds under section 108" after "upon request" in the first sentence thereof; and

(2) by striking out "to tribally controlled community colleges" in such sentence.

SEC. 6. (a) Section 106 of the Act (as redesignated by section 4(a)(1) of this Act) is amended—

(1) by striking out "FEASIBILITY" in the heading of such section and inserting in lieu thereof "ELIGIBILITY";

(2) by striking out "feasibility" each place it appears in such section and inserting in lieu thereof "eligibility";

(3) by striking out "Assistant Secretary of Education of the Department of Health, Education, and Welfare" in subsection (a) and inserting in lieu thereof "Secretary of Education";

(4) by inserting at the end of subsection (b) the following new sentence: "Such as positive determination shall be effective for the fiscal year succeeding the fiscal year in which such determination is made."; and

(5) by striking out "10 per centum" in subsection (c) (2) and inserting in lieu thereof "5 per centum".

(b) Section 107(a) of the Act (as redesignated by section 4(a) (1) of this Act) is amended—

(1) by striking out "feasibility" in subsection (a) and inserting in lieu thereof "eligibility", and

(2) by striking out "Assistant Secretary of Education of the Department of Health, Education, and Welfare" and inserting in lieu thereof "Secretary of Education".

SEC. 7. Section 108(a) of the Act (as redesignated by section 4(a) (1) of this Act) is amended to read as follows:

"SEC. 108. (a) Except as provided in section 111, the Secretary shall, subject to appropriations, grant for each academic year to each tribally controlled community college having an application approved by him an amount equal to the product of—

"(1) the Indian student count at such college during such academic year, as determined by the Secretary in accordance with section 2(a) (7) of this Act; and

"(2) (A) \$4,000 for fiscal year 1983,

"(B) \$4,000 for fiscal year 1984,

"(C) \$5,025 for fiscal year 1985,

"(D) \$5,415 for fiscal year 1986, and

"(E) \$5,820 for fiscal year 1987,

except that no grant shall exceed the total cost of the education program provided by such college."

SEC. 8. Section 109 of the Act (as redesignated by section 4(a) (1) of this Act) is amended—

(1) by inserting "(a)" immediately after the section designation; and

(2) by adding at the end thereof the following new subsections:

"(b) (1) The amount of any grant for which tribally controlled community colleges are eligible under section 108 shall not be altered because of funds allocated to any such colleges from funds appropriated under the Act of November 2, 1921 (42 Stat. 208; 25 S.S.C. 13).

"(2) No tribally controlled community college shall be denied funds appropriated under said Act of November 2, 1921, because of the funds it received under this Act.

"(c) For the purposes of section 312(2) (A) (i) and 322(a) (2) (A) (i) of the Higher Education Act of 1965, any Indian student who receives a student assistance grant from the Bureau of Indian Affairs for postsecondary education shall be deemed to have received such assistance under subpart 1 of part A of title IV of such Act."

SEC. 9. (a) Section 110 of the Act (as redesignated by section 4(a) (1) of this Act) is amended to read as follows:

"APPROPRIATION AUTHORIZATION

"SEC. 110. (a) (1) There is authorized to be appropriated, for carrying out section 105, \$3,200,000 for each of the fiscal years 1985, 1986, and 1987.

"(2) There is authorized to be appropriated for carrying out section 107, \$30,000,000 for each of such fiscal years.

"(3) There are authorized to be appropriated such sums as may be necessary to carry out sections 112 (b) and 113 for each of such fiscal years.

"(b) For the purpose of affording adequate notice of funding available under this Act, appropriations for grants provided in section 107 of the Act are authorized to be included in an appropriations Act for the fiscal year immediately preceding the academic year for which grants are to be provided. Amounts appropriated for the academic year succeeding the current fiscal year shall become available for obligation on July 1 of the year in which they are appropriated and shall remain available until September 30 of the succeeding fiscal year. In order

to effect a transition to the forward funding method of timing appropriation act, the provisions of this subsection shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act of otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding academic year."

SEC. 10. Section 111 of the Act (as redesignated by section 4(a)(1) of this Act) is amended by redesignating subsection (b) as subsection (c) and by striking out subsection (a) and inserting in lieu thereof the following:

"(a)(1) If the sums appropriated for any fiscal year pursuant to section 110 (a)(2) for grants under section 107 are not sufficient to pay in full the total amount which approved applicants are eligible to receive under such section for such fiscal year—

"(A) the Secretary shall first allocate to each such applicant which received funds under section 107 for the preceding fiscal year, or which was an eligible but unfunded application during the preceding year, an amount equal to the product of—

"(i) the per capita payment for the preceding fiscal year, and

"(ii) such applicant's Indian student count for the current fiscal year;

"(B) the Secretary shall next allocate an amount equal to the product described in subparagraph (A) to applicants who do not receive funds under subparagraph (A) in the order in which such applicants have qualified for assistance in accordance with section 107.

"(2) For purposes of paragraph (1) of this subsection, the term 'per capita payment' for any fiscal year shall be determined by dividing the amount available for grants to tribally controlled community colleges under section 107 for such fiscal year by the sum of the Indian student counts of such colleges for such fiscal year. The Secretary shall, on the basis of the most satisfactory data available, compute the Indian student count for any fiscal year for which such count was not used for the purpose of making allocations under this title.

"(b)(1) If the sums appropriated for any fiscal year for grants under section 107 are not sufficient to pay in full the total amount of the grants determined pursuant to subsection (a)(1)(A) the amount which applicants described in such subsection are eligible to receive section 107 for such fiscal year shall be ratably reduced.

"(2) If any additional funds become available for making payments under section 107 for any fiscal year to which subsection (a) or paragraph (1) of this subsection applies, such additional amounts shall be allocated by first increasing grants reduced under paragraph (1) of this subsection on the same basis as they were reduced and by then allocating the remainder in accordance with subsection (a). Sums appropriated in excess of the amount necessary to pay in full the total amounts for which applicants are eligible under section 107 shall be allocated by ratably increasing such total amounts.

"(3) References in this subsection and subsection (a) to section 107 shall, with respect to fiscal year 1982, be deemed to refer to section 106 as in effect at the beginning of such fiscal year."

SEC. 11. Section 112 of the Act (as redesignated by section 4(a)(1) of this Act) is amended to read as follows:

"REPORT ON FACILITIES

"Sec. 112. (a) The Administrator of General Services shall provide for the conduct of a study of facilities available for use by tribally controlled community colleges. Such study shall consider the condition of currently existing Bureau of Indian Affairs facilities which are vacant or underutilized and shall consider available alternatives for renovation, alteration, repair and reconstruction of such facilities (including renovation, alteration, repair, and reconstruction necessary to bring such facilities into compliance with local building codes). Such study shall also identify the need for new construction. A report on the results of such study shall be submitted to the Congress not later than September 30, 1984. Such report shall also include an identification of property (1) on which structurally sound buildings suitable for use as educational facilities are located, and (2) which is available for use by tribally controlled community colleges under section 202(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(a)(2)) and under the Act of August 6, 1956 (70 Stat. 1057; 25 U.S.C. 443a).

"(b) The Administrator of General Services, in consultation with the Bureau of Indian Affairs, shall initiate a program to conduct necessary renovations,

alterations, repairs, and reconstruction identified pursuant to subsection (a) of this section.

"(c) For the purposes of this section, the term 'reconstruction' has the meaning provided in the first sentence of subparagraph (B) of section 742(2) of the Higher Education Act of 1965 (20 U.S.C. 1132e-1(2)(B))."

Sec. 12. Section 113 of the Act (as redesignated by section 4(a)(1) of this Act) is amended to read as follows:

"CONSTRUCTION OF NEW FACILITIES

"Sec. 113. (a) With respect to any tribally controlled community college for which the report of the Administrator of General Services under section 112(a) of this Act identifies a need for new construction, the Secretary shall, subject to appropriations and on the basis of an application submitted in accordance with such requirements as the Secretary may prescribe by regulation, provide grants for such construction in accordance with this section.

"(b) In order to be eligible for a grant under this section, a tribally controlled community college (1) must be a current recipient of grants under section 105 or 107, and (2) must be accredited by a nationally recognized accrediting agency listed by the Secretary of Education pursuant to the last sentence of section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)), except that such requirement may be waived if the Secretary determines that there is a reasonable expectation that such college will be fully accredited within eighteen months. In any case where such a waiver is granted, grants under this section shall be available only for planning and development of proposals for construction.

"(c) (1) Except as provided in paragraph (2), grants for construction under this section shall not exceed 80 per centum of the cost of such construction, except that no tribally controlled community college shall be required to expend more than \$400,000 in fulfillment of the remaining 20 per centum. For the purpose of providing its required portion of the cost of such construction, a tribally controlled community college may use funds provided under the Act of November 2, 1921 (25 U.S.C. 13), popularly referred to as the Snyder Act.

"(2) The Secretary may waive, in whole or in part, the requirements of paragraph (1) in the case of any tribally controlled community which demonstrates that neither such college nor the tribal government with which it is affiliated have sufficient resources to comply with such requirements. The Secretary shall base a decision on whether to grant such a waiver solely on the basis of the following factors: (A) tribal population; (B) potential student population; (C) the rate of unemployment among tribal members; (D) tribal financial resources; and (E) other factors alleged by the college to have a bearing on the availability of resources for compliance with the requirements of paragraph (1) and which may include the educational attainment of tribal members.

"(d) If, within twenty years after completion of construction of a facility which has been constructed in whole or in part with a grant made available under this section—

"(1) the applicant ceases or fails to be a public or nonprofit institution,

"(2) the facility ceases to be used by the applicant as an academic facility, unless the Secretary determines that there is good cause for releasing the institution from this obligation, or

"(3) the tribe with which the applicant is affiliated fails to use the facility for a public purpose approved by the tribal government in furtherance of the general welfare of the community served by the tribal government, the United States shall be entitled to recover from such applicant (or its successor in title or possession) an amount which bears to the value of the facility at the time the same ratio as the amount of the grant under this section bore to the cost of the facility constructed with the aid of such grant. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is located.

"(e) No construction assisted with funds under this section shall be used for religious worship or a sectarian activity or for a school or department of divinity.

"(f) For the purposes of this section, the Secretary shall have the authority granted to the Secretary of Education pursuant to section 732(b) of the Higher Education Act of 1965 (20 U.S.C. 1132d-1) with respect to construction under title VII of such Act.

"(g) For the purposes of this section—

"(1) the term 'construction' includes reconstruction or renovation (as such terms are defined in the first sentence of subparagraph (B) of section 742(2) of the Higher Education Act of 1965 (20 U.S.C. 1132e-1(2)(B))); and

"(2) the term 'academic facilities' has the meaning provided such term under section 742(1) of the Higher Education Act of 1965 (20 U.S.C. 1132e-1(1))."

SEC. 13. The Act is further amended by adding at the end thereof the following new title:

**"TITLE III—TRIBALLY CONTROLLED COMMUNITY COLLEGE
ENDOWMENT PROGRAM**

"PURPOSE

"SEC. 301. It is the purpose of this title to provide grants for the encouragement of endowment funds for the operation and improvement of tribally controlled community colleges.

"ESTABLISHMENT OF PROGRAM; PROGRAM AGREEMENTS

"SEC. 302. (a) From the amount appropriated pursuant to section 306, the Secretary shall establish a program of making endowment grants to tribally controlled community colleges which are current recipients of assistance under section 107 of this Act or under section 3 of the Navajo Community College Act. No such college shall be ineligible for such a grant for a fiscal year by reason of the receipt of such a grant for a preceding fiscal year.

"(b) No grant for the establishment of an endowment fund by a tribally controlled community college shall be made unless such college enters into an agreement with the Secretary which—

"(1) provides for the establishment and maintenance of a trust fund at a federally insured banking or savings institution;

"(2) provides for the deposit in such trust fund

"(A) any Federal capital contributions made from of—funds appropriated under section 306;

"(B) a capital contribution by such college in an amount equal to the amount of each Federal capital contribution; and

"(C) any earnings of the funds so deposited;

"(3) provides that such funds will be deposited in such a manner as to insure the accumulation of interest thereon at a rate not less than that generally available for similar funds deposited at the same banking or savings institution for the same period or periods of time;

"(4) provides that, if at any time such college withdraws any capital contribution made by that college, an equal amount of Federal capital contribution shall be withdrawn and returned to the Secretary for reallocation to other colleges;

"(5) provides that no part of the net earnings of such trust fund will inure to the benefit of any private person; and

"(6) includes such other provisions as may be necessary to protect the financial interest of the United States and promote the purpose of this title and as are agreed to by the Secretary and the college, including a description of recordkeeping procedures for the expenditure of accumulated interest which will allow the Secretary to audit and monitor programs and activities conducted with such interest.

"USE OF FUNDS

"SEC. 303. Interest deposited, pursuant to section 302(b)(2)(C), in the trust fund of any tribally controlled community college may be periodically withdrawn and used, at the discretion of such college, to defray any expenses associated with the operation of such college, including expense of operations and maintenance, administration, academic and support personnel, community and student services programs, and technical assistance.

"COMPLIANCE WITH MATCHING REQUIREMENT

"SEC. 304. For the purpose of complying with the contribution requirement of section 302(b)(2)(B), a tribally controlled community college may use funds which are available from any private or tribal source.

"ALLOCATION OF FUNDS

"SEC. 305. (a) From the amount appropriated pursuant to section 306, the Secretary shall allocate to each tribally controlled community college which is eligible for an endowment grant under this title an amount for a Federal capital contribution equal to the amount which such college demonstrates has been placed within the control of, or irrevocably committed to the use of, the college and is available for deposit as a capital contribution of that college in accordance with section 302(b)(2)(B), except that the maximum amount which may be so allocated to any such college for any fiscal year shall not exceed \$350,000.

"(b) If for any fiscal year the amount appropriated pursuant to section 306 is not sufficient to allocate to each tribally controlled community college an amount equal to the amount demonstrated by such college pursuant to subsection (a), then the amount of the allocation to each such college shall be ratably reduced.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 306. (a) There is authorized to be appropriated \$5,000,000 for each of the fiscal years 1985, 1986, and 1987 to carry out this title.

"(b) Any funds appropriated pursuant to subsection (a) are authorized to remain available until expended."

SEC. 14. In promulgating any regulations to implement the amendments made by this Act, the Secretary of the Interior shall consult with tribally controlled community colleges.

PURPOSE

The purpose of S. 2623 is to amend provisions of the Tribally Controlled Community College Assistance Act of 1978, Public Law 95-471, and to extend the authorizations for appropriations through fiscal year 1987.

BACKGROUND AND NEED

The Tribally Controlled Community College Assistance Act of 1978, Public Law 95-471, became law on October 17, 1978. The Act authorizes grants for operating and improving tribally controlled community colleges and mandates the use of a formula to assure stable and equitable funding for tribally controlled community colleges. Title I of the Act provides authorizations for appropriations through fiscal year 1981 to tribally controlled community colleges which have been determined to be feasible and which will serve a reasonable service population. The Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, extended the authorizations through fiscal year 1984. Title I of the Act applies to all Indian community colleges with the exception of the Navajo Community College. As originally enacted, Title I requires reauthorization for operation and maintenance grants.

Title II of the Act is the Navajo Community College Assistance Act of 1978 and applies exclusively to Navajo Community College, providing operation and maintenance grants for any fiscal year beginning on or after October 1, 1979. As originally enacted, Title II did not require reauthorization for operation and maintenance grants. Title II appropriations authorizations were extended through 1984 by the Omnibus Budget Reconciliation Act of 1981.

The Select Committee on Indian Affairs held a hearing on the proposed reauthorization of the Tribally Controlled Community College Assistance Act on June 15, 1982. Testimony was received from the Department of the Interior, the American Indian Higher Education Consortium, and from representatives and presidents of several of the eighteen existing tribally controlled community colleges. All

witnesses testified to the valuable role community colleges have played in developing the capacity of tribal governments and Indian individuals to achieve Indian self-determination.

Tribally controlled community colleges have proven to be very successful in responding to the educational needs of their respective tribal communities. In the past, severe economic conditions and the geographic isolation of many reservation communities made access to higher education a virtual impossibility. Dropout rates at traditional higher education institutions were high and the skills acquired at such colleges were not necessarily relevant to the needs of reservation communities. The existence of tribally controlled community colleges has made higher education accessible to a sizeable number of Indian individuals and has provided those individuals with previously unobtainable opportunities to enhance their employability, and in many cases, to pursue higher education degrees. The capacity of tribally controlled community colleges to provide culturally and community relevant programs makes them uniquely suited to respond to the long unmet educational needs of tribal communities.

The progress of tribally controlled community colleges toward meeting their own educational goals is encouraging. Thirteen of the eighteen existing colleges have achieved full accreditation or accreditation candidacy status. Student enrollment continues to increase annually, and more tribally controlled community college students are continuing their education in bachelor degree and graduate programs. The colleges have made steady progress in expanding their academic curricula and serving as an extraordinary valuable resource to tribal communities.

Still, reservation economies are among those hardest hit by the current economic recession and the substantial cuts in Federal expenditures. Unemployment rates on many reservations range from 75 to 90%. The geographic isolation of most reservation communities has always seriously inhibited private economic development initiatives. Compounding these problems today is the severe negative impact the current recession is having on those tribes that are dependent upon the development of their natural resources to survive. Reservation-based businesses have been forced to lay off record numbers of employees or close down altogether. In fulfillment of its continuing trust obligations, the Federal government has traditionally played a significant role in providing employment on Indian reservations, but widespread reductions in force in the Bureau of Indian Affairs and other Federal agencies now contribute to the alarmingly high unemployment rates on many reservations.

In this context, tribally controlled community colleges are facing a substantially increased demand for education as newly unemployed individuals turn to the colleges for training in new employment skills and job retraining. With mounting economic pressures to streamline the processes of government, tribal governments are also seeking the assistance of the colleges to learn the latest techniques of achieving efficiency in management, accounting, and economic development. Given the expanding needs to which they are attempting to respond, tribally controlled community colleges are increasingly playing a crucial role in implementing the federal policy of Indian self-determination.

There are currently eighteen colleges in seven states receiving funds under the authority of the Tribally Controlled Community College Assistance Act. Those colleges are:

Blackfeet Community College, Browning, Montana.
 Cheyenne River Community College, Eagle Butte, South Dakota.
 College of Ganado, Ganado, Arizona.
 Deganawidah-Quetzalcoatl University, Davis, California.
 Dull Knife Memorial College, Lame Deer, Montana.
 Fort Berthold Community College, New Town, North Dakota.
 Fort Peck Community College, Poplar, Montana.
 Little Big Horn Community College, Crow Agency, Montana.
 Navajo Community College, Tsaile, Arizona.
 Oglala Sioux Community College, Kyle, South Dakota.
 Salish-Kootenai Community College, Pablo, Montana.
 Sinte Gleska College, Rosebud, South Dakota.
 Sisseton-Wahpeton College Center, Sisseton, South Dakota.
 Standing Rock Community College, Fort Yates, North Dakota.
 Turtle Mountain Community College, Belcourt, North Dakota.
 Little Hoop Community College, Fort Totten, North Dakota.
 Lummi College of Fisheries, Lummi Island, Washington.
 Nebraska Indian Community College, Winnebago, Nebraska.

MAJOR PROVISIONS

During the Committee's hearings on the reauthorization of the Tribally Controlled Community College Assistance Act, the colleges cited a number of problems they were experiencing with operating under the current law. Both the House and the Senate bills reauthorizing the Act seek to address these problems and to allow tribally controlled community colleges to operate in a setting that is equivalent to other post-secondary institutions.

S. 2623 allows tribally controlled community colleges to achieve the stability of funding that is so critical to obtaining accreditation by providing for forward funding of appropriations under the Act. This provision allows tribally controlled community colleges to be funded on the same basis as all other post-secondary institutions which receive funding under the Higher Education Act.

S. 2623 also provides for the evaluation and renovation of facilities located on Indian reservations and which are scheduled for closure by the Bureau of Indian Affairs. Rather than allowing these buildings to deteriorate and fall into an unredeemable state of disrepair, S. 2623 permits an evaluation of the facilities to be conducted by the General Services Administration and a report to be made to Congress by the Administrator of General Services. The construction of new facilities through grants for which a tribe would provide a matching share is also authorized. The availability of facilities for use by a college is a critical element in the determinations of accrediting bodies as to whether a college qualifies for candidacy status or full accreditation.

Consistent with Administration policy positions, S. 2623 provides for the stimulation of private sector investment in education by establishing an endowment program under the Act. A matching requirement assures that the building up of endowment funds will be a joint effort of the college and its private contributors. The Committee views this provision as integral to the development of the colleges' capacities to one day operate independently.

THE FEDERAL TRUST RESPONSIBILITY

The legal basis for the Tribally Controlled Community College Assistance Act and the proposed reauthorization of the Act is the underlying trust obligation of the Federal government to Indian tribes when the United States is involved in the provision of Indian education. The Select Committee on Indian Affairs recommends that the Senate pass S. 2623 in fulfillment of the United States' continuing legal trust responsibility as it relates to education for Indian students.

S. 2623 authorizes funding of colleges which become newly qualified to receive funding under the Act in the succeeding fiscal year, if such colleges were eligible for funding but were not funded in the preceding fiscal year. H.R. 6485 would prevent the funding of newly-qualified colleges unless appropriations were sufficient to fund all existing colleges at their previous year's level of funding. The Select Committee on Indian Affairs believes that the duty to provide funding to colleges which have been determined by the Secretary of the Interior to be eligible for funding should not be limited in the manner that is directed by the House bill. To limit the Secretary's duty in this fashion, the Committee believes, is to predicate the trust responsibility of the United States to provide education to Indian students on the availability of appropriations. While program delivery may be affected by appropriation levels, the underlying trust responsibility for the health and educational needs of Indian people is not thereby diminished. Congress has not defined the Federal government's trust responsibility in terms of the availability of funds, and the Select Committee on Indian Affairs strongly opposes language that would narrow the scope of the United States' trust responsibility.

The federal policy which supports the trust is and always has been to insure the welfare and the survival of Indian tribes and Indian people. This includes an obligation to provide those services necessary to protect and enhance Indian lands, resources, and self-government, as well as those social programs required to raise the standard of living and the social well-being of the Indian people to a level equivalent to that enjoyed by non-Indians. This duty has long been recognized implicitly by Congress in numerous acts, including the Snyder Act of 1921, the Indian Reorganization Act of 1934, the Johnson-O'Malley Act of 1934, the Native American Programs Act of 1974, the Indian Self-Determination and Education Assistance Act of 1975, and the Indian Health Care Improvement Act of 1976. [A comparative analysis of United States' trust responsibility as it relates to Indian physical and human resources is set forth in Chapter Four of the Final Report of the American Indian Policy Review Commission.]

LEGISLATIVE HISTORY

S. 2623 was introduced in the Senate on June 10, 1982, by Senator Cohen for himself and Senators Andrews, Melcher, Inouye, Baucus, Burdick, Abner, and Pressler. The Select Committee on Indian Affairs held a hearing on the bill on June 15, 1982. S. 2623 was ordered reported by the Select Committee on Indian Affairs on September 29, 1982. A similar bill, H.R. 6485, was introduced in the House of Representatives on May 25, 1982, by Congressman Simon for himself and 14 co-sponsors. The Subcommittee on Post-Secondary Education of

the House Education and Labor Committee held a hearing on May 4, 1982, on draft legislation to amend and extend Public Law 95-471. The bill was reported out of the House Committee on Education and Labor on July 27, 1982.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on September 29, 1982, by unanimous vote and with a quorum present, recommends that the Senate pass S. 2623 with the amendment as described herein.

COMMITTEE AMENDMENTS

The Select Committee on Indian Affairs adopted an amendment in the nature of a substitute as described in the section-by-section analysis that follows:

SECTION-BY-SECTION ANALYSIS

Section 1 amends the "Definitions" section of the Act as set forth in Section 2.

Section 2 amends the "Definitions" section of the Act, clarifying that the Secretary referred to therein is deemed to refer to the Secretary of the Interior and provides a new method for determining Indian student count. The new method for determining Indian student count more accurately reflects the number of enrolled students in an academic year.

Section 3 amends section 102 to make clear that the Secretary is directed to make planning grants, subject to appropriations. Section 3 also amends section 102 to make explicit the purposes for which planning grant funds may be expended. Expenditures for academic, educational, and administrative purposes and for the operation and maintenance of the college may include community and student services programs and the provision of technical assistance.

Section 4 adds a new section which authorizes the Secretary to make planning grants to colleges which are determined to be eligible, and redesignates the numbering of the sections which follow.

Section 5 clarifies that it is upon the request of a tribally controlled community college which is receiving funds under section 108 that the Secretary shall provide technical assistance.

Section 6 replaces the word eligibility where the word feasibility appears, clarifies that the Secretary of Education rather than the Assistant Secretary of Education of the Department of Health, Education, and Welfare is the person with whom the Secretary of the Interior is authorized to enter into agreements. Section 6 also provides that a positive determination of eligibility for funding under the authority of Public Law 95-471 shall be effective for the fiscal year succeeding the fiscal year in which the determination is made.

Section 7 provides for a formula upon which the funding of tribally controlled community colleges shall be based.

Section 8 provides that grants to colleges under Public Law 95-471 shall not be reduced by virtue of the fact that the tribe with which the college is affiliated has allocated some of its Snyder Act funds to the operation of the college, and that the amount of tribally-allocated Snyder Act funds shall not be reduced by reason of the fact that the college is receiving funds under the authority of Public Law 95-471.

Section 8 also provides that for purposes of eligibility for Title III of the Higher Education Act of 1965, BIA student higher education grants are equivalent to Pell grants.

Section 9 provides for the forward funding of appropriations authorized for tribally controlled community colleges and extends the authorizations for technical assistance and program grants at the current levels for three additional years. Section 9 also provides for funds necessary to the construction of new facilities and for the renovation of facilities.

Section 10 provides that the funding of newly qualified colleges shall be on an equal basis with existing colleges if the newly qualified college became eligible for funding in the preceding fiscal year but was not funded during that year.

Section 11 requires the Administrator of General Services to submit a report to Congress following a study of facilities available for use by tribally controlled community colleges.

Section 12 authorizes the construction of new facilities if the Administrator of General Services, in his report to Congress, identifies a need for new construction.

Section 13 establishes a new Title III of the Act, creating a tribally controlled community college endowment program. Section 13 authorizes grants to be made to tribally controlled community colleges as incentive for private contributions to an endowment fund, on the condition that the college enter into an agreement with the Secretary providing for the establishment and maintenance of a trust fund at a federally insured banking or savings institution. The agreement must also contain other provisions as may be necessary to protect the financial interest of the United States and to promote the purpose of the Title. The funds may be used by the college to defray expenditures associated with the operation of the college, including the expense of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, and technical assistance. The amount of each Federal capital contribution to the endowment fund is required to be matched by the college. Section 13 authorizes appropriations of \$5,000,000 for each fiscal year from 1985 through 1987 to carry out Title III.

Section 14 requires the Secretary of the Interior to consult with tribally controlled community colleges in promulgating any regulations to implement the amendments made to the Act.

COST AND BUDGETARY CONSIDERATION

The cost estimates for S. 2623, as amended, as provided by the Congressional Budget Office, is outlined below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., November 18, 1982.

HON. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 2623, the Amendments to the Tribally

Controlled Community College Act, as ordered reported by the Senate Select Committee on Indian Affairs, September 29, 1982.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

Alice M. Rivlin,
Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 2623.

2. Bill title: Amendments to the Tribally Controlled Community College Act.

3. Bill status: As ordered reported by the Senate Select Committee on Indian Affairs, September 29, 1982.

4. Bill purpose: The purpose of this bill is to amend and extend the authorization for the tribally controlled community colleges and to authorize funds to be appropriated on an advance funding basis. This bill is subject to subsequent appropriations action.

5. Cost estimate:

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987
Authorization levels:					
Technical assistance grants.....			3.2	3.2	3.2
Grants to tribally controlled community colleges.....			30.0	30.0	30.0
GSA facilities study.....	(1)	(1)			
GSA reconstruction funds.....			(2)	(2)	(2)
New construction grants.....			(2)	(2)	(2)
Endowment program.....			5.0	5.0	5.0
Total authorization level.....	(1)	(1)	38.2	38.2	38.2
Estimated outlays.....	(1)	(1)	38.2	38.2	38.2

¹ Less than \$50,000.

² The authorization levels for the GSA reconstruction funds and the new construction grants are to be based on the results of GSA facilities study.

6. Basis for estimate: The Omnibus Reconciliation Act of 1981 currently authorizes both the technical assistance grants and the grants to tribally controlled community colleges through 1984. The authorization levels associated with this bill for both technical assistance and grants to the community colleges as well as the new endorsement program are those specifically stated in the bill for 1985 through 1987. The estimate assumes full appropriation of the authorized amounts. Because the bill provides for advance funding of appropriations, the first year spending rate is expected to be 100 percent of appropriations rather than the 76 percent first year rate under the current program funding.

S. 2623 also includes an indirect authorization which requires the General Services Administration (GSA) to undertake a study of the current facilities to the tribally controlled community colleges to determine the colleges' needs for repairs, renovation, reconstruction, and new construction. The total cost of this study is expected to be under \$100 thousand. The study is to be completed by September 30, 1984.

The authorization levels for the GSA renovation and new construction grants are open ended but are to be based on the data collected

in the GSA study of the facilities. Until the study is completed no estimate of these authorizations can be made.

7. Estimate comparison: None.

8. Previous CBO estimate: On July 27, 1982 CBO prepared a cost estimate on H.R. 6485, Amendments to the Tribally Controlled Community College Act, as ordered reported by the House Education and Labor Committee. The costs associated with these bills are the same.

9. Estimate prepared by: Deborah Kalcevic.

10. Estimate approved by:

C. G. NUCKOL
(For James L. Blum,
Assistant Director for Budget Analysis).

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill.

The Committee believes that S. 2623, as amended, will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The legislative reports on S. 2623 received by the Committee from the Departments of the Interior and Justice are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., December 3, 1982.

HON. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This supplements our reports to your Committee of August 18, 1982, and September 28, 1982 and our June 15, 1982 testimony before the Committee on S. 2623, a bill "To amend and extend the Tribally Controlled Community College Assistance Act of 1978."

We greatly appreciate the work you and your Committee have devoted to this legislation and acknowledge the revisions that have been made since the bill was first introduced. This supplementary report provides our views on the bill with the amendment in the nature of a substitute which we understand your Committee adopted on September 29 when the bill was ordered reported. The substitute amendment meets many of our objections to the bill and its adoption would be a significant improvement to the bill. However, we remain strongly opposed to a provision in section 8.

Although the Committee has apparently attempted to meet our objections to section 8 of the bill as introduced, we do not believe that the proposed new section 109(b) of the Act, included in section 8 of the substitute amendment, adequately meets our objections. We did not have an opportunity to comment on that provision of the substitute amendment prior to your September 29 Committee meeting.

The proposed new section 109(b) would read as follows:

"(b) (1) The amount of any grant for which a tribally controlled community college is eligible under section 108 shall not be reduced by reason of any allocation of funds provided under the Act of November 2, 1921 (25 U.S.C. 13), commonly referred to as the Snyder Act, which is made by the tribe with which such college is affiliated in accordance with priorities established by such tribe in the President's budget preparation process.

"(2) The amount of any funds provided under the Act of November 2, 1921 (25 U.S.C. 13)—

"(A) for which any tribe affiliated with a tribally controlled community college is eligible, and

"(B) which is allocated to such college by such tribe in accordance with priorities established by such tribe in the President's budget preparation process, shall not be reduced by reason of any grant made to such college under this title."

We believe that the above language may be viewed by some as an attempt to limit the authority of the Secretary or the President to make budget recommendations to the Congress. Such a limit would, of course, be contrary to the Constitution.

We understand from discussions with your Committee's staff that the intent of the proposed new section 109(b) is to clarify the application to the Bureau of Indian Affairs of the current provision in section 108 (25 U.S.C. 1809) of the Act which reads as follows:

"§ 108. Effect on other programs

"Except as specifically provided in this chapter, eligibility for assistance under this chapter shall not, by itself, preclude the eligibility of any tribally controlled college to receive Federal financial assistance under any program authorized under the Higher Education Act of 1965 or any other applicable program for the benefit of institutions of higher education, community colleges, or postsecondary educational institutions."

From the discussions with your staff, we believe that the intended meaning of the proposed section 109(b) would be more clearly stated as follows:

"(b) (1) The amount of any grant for which tribally controlled community colleges are eligible under section 108 shall not be altered solely because of funds allocated to any such colleges from funds appropriated under the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

"(2) No tribally controlled community college shall be denied funds appropriated under said Act of November 2, 1921, solely because of the funds it receives under this Act."

We urge the Committee's adoption of this language.

In addition, we still have concerns about two other sections of the bill.

We remain opposed to the provisions in section 2 of the substitute amendment. We do not currently provide funds for improvement or expansion of physical facilities of the colleges. When the program was originally conceived, Congress contemplated use of existing community facilities. Building additional facilities appears to be duplicative and unwarranted at a time when Federal expenditure need to be held down. Funds provided through the Bureau are for program support only. We do not support broadening those limits.

We also remain opposed to the provisions in section 4 of the substitute amendment, which provides planning grants to tribes to develop proposals to establish additional tribally controlled community colleges. We believe this type of analysis and planning is best done at the option of the individual tribes within available resources and as part of their regular developmental processes. In light of the Administration's efforts to decrease Federal spending, we cannot support a request for the additional funds this section would require.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the submission of this report.

Sincerely,

KENNETH L. SMITH,
Assistant Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 28, 1982.

HON. WILLIAM S. COHEN,
*Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This supplements our report to your Committee of August 18, 1982 and our June 15, 1982 testimony before the Committee on S. 2625, a bill "To amend and extend the Tribally Controlled Community College Assistance Act of 1978."

This supplementary report provides our views on the attached "Committee amendments" prepared by your Committee's staff and delivered to us on September 23. These amendments meet many of our objections to the bill and their adoption would be a significant improvement to the bill. However, they do not meet all of our objections, including our objections to the new funding authorizations in the bill.

We are still opposed to section 2(2). We do not currently provide funds for improvement or expansion of physical facilities of the colleges. When the program was originally conceived, Congress contemplated use of existing community facilities. Additionally, at a time when enrollments are declining in publicly financed community colleges, building additional facilities appears to be duplicative and unwarranted. Funds provided through the Bureau are for program support only. We do not support broadening those limits.

We remain opposed to section 4, which provides planning grants to tribes to develop proposals to establish additional tribally controlled community colleges. We believe tribal needs and interests, rather than additional funds, will best motivate the analysis and development that become necessary in order to meet new educational needs and opportunities. In light of the Administration's efforts to decrease Federal spending, we cannot support a request for the additional funds this section would require.

We continue to strongly oppose section 8. As expressed in our report to the Committee, it is an unacceptable limitation on the Secretary's authority.

The Office of Management and Budget advises that there is no objection to the submission of this report.

Sincerely,

JOHN W. FRITZ,
Deputy Assistant Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., August 18, 1982.

HON. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of the Administration on S. 2623, a bill "To amend and extend the Tribally Controlled Community College Assistance Act of 1978."

As we expressed in our testimony before the Committee, we are strongly opposed to enactment of S. 2623. This testimony explained the Administration's reasons for opposing many provisions of this bill.

At this time, we re-emphasize our strong opposition to the following provisions of the bill:

1. Section 2—It would amend section 101 of the Act to emphasize that the support of tribal community colleges is a part of the Federal trust responsibility. Indian education should not be characterized as a trust responsibility. Because tribal needs vary, the Federal response to them should vary. This bill implies an absolute responsibility to provide tribally controlled community colleges with assistance regardless of real need. This is not good government. There is no question that the Federal Government has undertaken to provide educational services and assistance for many Indian students. However, this undertaking stems from the political relationship of Indian tribes with the Federal Government. It is this political or government-to-government relationship, rather than any trust responsibility, that gives rise to several social service programs (including education) that enhance the well-being of Indian tribes.

2. Section 8—This provision would amend the redesignated section 109 by providing that tribally-approved funding priorities could not be "arbitrarily" changed by the Secretary. This would permit tribes to supplement the grants to community colleges authorized under this and the 1978 Act, by shifting funds from other BIA-funded programs of the tribe, and override the Secretary's authority to make alternative recommendations during the development of the President's budget. This is an unacceptable limitation on the Secretary's authority.

3. Section 9—This would extend the authorization for appropriations under the Act through fiscal years 1985, 1986 and 1987 and would provide for authorization of funds necessary to carry out the studies of facilities needs under the redesignated section 113. Section 9 would also provide for advance appropriations to carry out the Act. We are strongly opposed to this form of funding and believe that other alternatives should be fully examined.

4. Section 14(b) contains an unconstitutional legislative veto device. We oppose this provision for the reasons set forth in the Department of Justice's letter to your Committee on this matter.

The Office of Management and Budget advises that enactment of S. 2623 with the foregoing provisions would not be in accord with the program of the President.

Sincerely,

JOHN W. FRITZ,
Acting Assistant Secretary—Indian Affairs.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., August 24, 1982.

HON. WILLIAM S. COHEN,
*Chairman, Select Committee on Indian Affairs, U.S. Senate, Wash-
ington, D.C.*

DEAR MR. CHAIRMAN: This letter presents the views of the Department of Justice on section 14(b) of S. 2623, a bill "to amend and extend the Tribally Controlled Community College Assistance Act of 1978, and for other purposes."

The Department of Justice strongly opposes enactment of this provision.

Section 14(a) of S. 2623 provides that in promulgating any regulations to implement the legislation, the Secretary of the Interior shall consult with tribally controlled community colleges. Section 14(b) provides that: "any such regulations and any other regulations promulgated pursuant to the Act shall be subject to section 431 of the General Education Provisions Act, and the requirements of such section applicable to the Secretary of Education shall apply to the Secretary of the Interior with respect to such regulations."

Section 431 of the General Education Provisions Act, 20 U.S.C. 1232 states in part:

"(d) (1) Concurrently with the publication in the Federal Register of any final regulation (except expected family contribution schedules and any amendments thereto promulgated pursuant to section 1073 (a) (2) (E) and (E) and 1089(a) (1) and (2) of this title) as required in subsection (b) of this section such final regulation shall be transmitted to the Speaker of the House of Representatives and the President of the Senate. Such final regulation shall become effective not less than forty-five days after such transmission unless the Congress shall, by concurrent resolution find that the final regulation is inconsistent with the Act from which it derives its authority, and disapprove such final regulation, in whole or in part. Failure of the Congress to adopt such a concurrent resolution with respect to any such final regulation prescribed under any such Act, shall not represent, with respect to such final regulation, an approval or finding of consistency with the Act from which it derives its authority for any purpose, nor shall such failure to adopt a concurrent resolution be construed as evidence of an approval or finding of consistency necessary to establish a prima facie case, or an inference or presumption, in any judicial proceeding.

The Department has frequently stated its opposition to provisions such as 20 U.S.C. 1232(d) (1). This section is unconstitutional for two reasons. First, it purports to authorize the Congress to pass a resolution having the force and effect of law, but it fails to conform to the procedural requirements governing exercises of legislative action set forth in Art. I, § 7, cls. 2 and 3 of the Constitution. These procedures require that all Congressional actions having the force and effect of law must be adopted by both Houses of Congress and presented to the President for his approval or veto. Second, the section would purport to allow Congress to play a direct and significant role in the execution of the law contrary to the principle of separation of powers. Under

this principle, it is Congress' responsibility to legislate and the Executive Branch's responsibility to execute the laws. We note that the general position of the Department regarding such provisions recently has been adopted in a decision by the Court of Appeals for the District of Columbia Circuit. *Consumer Energy Council of America v. Federal Energy Regulatory Commission*, Nos. 80-2184, 80-2312 (filed January 29, 1982). Under that decision such legislative veto devices are clearly unconstitutional. See also *Chada v. Immigration and Naturalization Service*, 634 F2d. 208 (9th Cir. 1980), pending before the Supreme Court as Nos. 80-1832, 80-2170 and 80-2171 (argued Feb. 22, 1982).¹

For the foregoing reasons, the Department of Justice strongly opposes enactment of section 14(b) and urges that it be deleted from S. 2623.

The Office of Management and Budget has advised this Department that enactment of this legislation is not in accord with the program of the Administration.

Sincerely,

ROBERT A. McCONNELL,
Assistant Attorney General,
Office of Legislative Affairs.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states as follows: It is the opinion of the Committee that it is necessary to dispense with the requirements of this subsection to expedite the business of the Senate.

¹ We note that the constitutionality of a two-House legislative veto device is presently *sub judice* before the D.C. Circuit sitting *en banc* in the case of *Consumer Union of the United States, Inc. v. United States Senate and United States House of Representatives*, No. 82-1736 (certified June 28, 1982). We would add that the D.C. Circuit's decision in *Consumer Energy Council of America v. Federal Energy Regulatory Commission*, *supra*, is presently before the Supreme Court in jurisdictional statements filed by several intervenors in that case as well as on petitions for a writ of certiorari filed recently by counsel for the Senate and House of Representatives. The Solicitor General expects to file appropriate papers with the Supreme Court in support of the judgment of the Court of Appeals before September 7, 1982.

